IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 4.4.2007

CORAM :

THE HONOURABLE MR.JUSTICE DHARMA RAO ELIPE
and
THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P.Nos.29636, 31895, 31896 31897 of 2003,
4944, 5028, 5720, 5721, 5722, 8061, 8165, 9147,
20399 of 2004 and 25132 of 2006

P.Perumal ... Petitioner in W.P.29636/03
D.V. Jayasingh Kovil Pillai ... Petitioner in W.P.31895/03

1. S. Enamuthu
2. G. Duraisingh
3. S. Irudhayaraj
4. A. Vinayagamoorthy ... Petitioners in W.P.31896/03

1. G. Anbalagan
2. S. Murugaanathan
3. J. Muralidharan
4. A. Ramesh
5. T. Mohanavelan ... Petitioner in W.P.31897/03

M. Indira ... Petitioner in W.P.4944/04

1. R. Chellappa
2. V. Jothimani
3. R. Narasimhan
4. Jojo Abraham
5. S. Sridharan
6. N. Prasanna Venkatesan
7. D.P. Sri Sankar
8. K. Manohari
9. Sumathi Murliksishmam
10. S. Lakshmanan
11. A. Ramasamy
12. T. Venkatachalam ... Petitioner in W.P.5028/04

M. Jegadeesan ... Petitioner in W.P.5720/04

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S. Balasubramanian ... Petitioner in W.P.5721/04
B. Krishnamoorthy ... Petitioner in W.P.5722/04
J. Muralidharan ... Petitioner in W.P.8061/04
J. Vijayan ... Petitioner in W.P.8165/04
R.J. Prema ... Petitioner in W.P.9147/04
E. Arivuchelvi ... Petitioner in W.P.20399/04

1. R. Chellappa
2. M. Indira
3. S. Balasubramanian
4. S. Sridharan
5. R.J. Prema ... Petitioner in W.P.25132/04

Vs.

A.V.Sureshbabu ... ISt Respondent in W.P.29636/03
M. Natarajan ... ISt Respondent in W.P.31895/03
K. Manoharan ... ISt Respondent in W.P.31896/03
V. Bragadambal ... ISt Respondent in W.P.31897/03
P. Manoharan ... ISt Respondent in W.P.4944/04
V. Bragadambal ... ISt Respondent in W.P.5028/04
R. Chandrasekaran ... ISt Respondent in W.P.5720/04
D. Malliga ... ISt Respondent in W.P.5721/04
C. Babu ... ISt Respondent in W.P.5722/04
K.Manoharan ... ISt Respondent in W.P.9147/04

The State of Tamil Nadu
rep. By its Secretary to Government
Social Welfare Department
Fort St. George
Chennai - 600 009 ... 2nd Respondent in W.P.Nos.29636, 31895, 31896 31897 of 2003, 4944, 5720, 5721, 5722, 9147, /04 &

Ist Respondent in W.P.8061/04, 8165 & 20399/04 and
3rd Respondent in W.P.5028/04

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The Director of Social Welfare Department
Chepauk
Chennai - 600 005 ... 3rd Respondent in W.P.Nos. 29636 31895, 31896, 31897 of 2003,4944, 5720, 5721, 5722, 9147/04

2nd Respondent in W.P.8061/04, 5028/04, 8165 and 20399/04

The Registrar
Tamil Nadu Administrative Tribunal
High Court Building
Chennai - 600 104 .. 4th Respondent in W.P.Nos.29636/03, 31895 to 31897/03, 4944, 5028, 5720 to 5722/04

3rd Respondent in W.P.No.8061/04, 8165/04, & 5th Respondent in W.P.9147/04

District Social Welfare Officer
Thanjavur ... 4th respondent in W.P.9147/04

1. State of Tamilnadu
represented by the Secretary to Governemnt
Social Welfare and Nutritious Meal Programme Department
Secretariat,
Chennai-9.

2.Director of Social Welfare
Chepauk, Chennai-5

3. S. Karthikeyan
Typist
District Project Office WB ICDS
Collector Office Campus
Kancheepuram
Kancheepuram District.

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4. R. Devaki
5. K. Manogaran
6.M. Jayaselvi Vimalabai
7.A. Bangacham
8.S.Kalavathi
9.N. Kannan
10.G. Padmavathi
11.S. Prema
12.R. Ratnabai
13.V. Rangasamy
14.J. Delsiya Anjalin
15.V.K. Padmini
16.S. Anbuselvi
17.M. Ayyavu
18.A. Sowkath Alikan
19.V. Saratha
20.V. Indrani
21.S. Mugamatha
22.S. Shyamala
23.T. Paramasivam
24.R. Manoranchitham
25.T. Umarani
26.A. Hemayun
27.V. Pragathambal
28.K. Podhumani
29.S. Paul Raj
30.K. Karunakaran
31.R. Chandrasekaran
32.T. Jasmine Prema
33.T. Sundari Bai
34.P. Porselvi
35.S. Nageswari
36.S. Arul Mozhi
37.A. Murugammal
38.P. Manogaran
39.T. Renuka
40.S. Govindaswamy
41.V. Santhi
42.G. Nagalakshmi
43.S. Santhi
44.P. Koppammal
45.M. Natarajam
46.M. Vijaya Lakshmi
47.S. Gururaj
48.M. Manjula
49.M. Mary Victoria

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50.K. Girija
51.R. Kamala
52.A. Rajendran
53.R. Ganesan
54.V. Subatra
55.S.K. Shakila
56.G.Thangamani
57.S. Rajeswari
58.S. Bappu
59.K.R. Malathi
60.P. Mallika
61.J. Bakyalakshmi
62.P. Arumugam
63.V. Palani Velu
64.T. Punithavathi
65.R. Meenambikai
66.C. Chandra
67.L. Perumal
68.K. Megarunbi
69.N. Chinna Rani
70.H. Parthiban
71.M. Peruyanayagi
72.V. Sivagami
73.A. Sarala
74.V. Sangari
75.A. Albonsa
76.A. Kalavathi
77.S. Baburajendran
78.T. Mallika
79.V. Esakki Ammal
80.G. Susila
81.S. Gnanaprakasam
82.P. Palani
83.K. Premavathi
84.S. Mallika
85.T. Jayadev
86.K.S. Parimala
87.R. Premkumari
88.K. Selvamani
89.P. Siraj Begum
90.P. Selvam
91.N.V. Muralidharan
92.T. Geetha
93.R. Chanra
94.V. Sathyanaranamoorthi
96.A. Balaji

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97.C. Babu
98.A.V. Suresh Babu
99.R. Amutha
100.M. Saraswathi
101.K. Usha
102.N. Renuka
103.M. Jayachandran
104.K. Muniyamma
105.P. Prema
106.P. Rajeswari
107.P. Indra
108.P.H. Padmavathi
109.G. Manickam
110.R. Alamelu
111.A. Dhanam
112.S. Veeramani
113.V. Kannan
114.R. Sasikala
115.N. Indra
116.V. Sokkar
117.A. Ramachandran
118.S. Sardhar
119.R. Chandra Mohan
120.V. Vijayalakshmi
121.V, Kensi Stephen
122.P. Prema
123.K. Nagarajan
124.R. Thangavelu
125.K. Ponkodi
126.K.P. Prajeswari
127.G. Gunasekaran
128.P. Lalitha
129.A. Chinnappa
130.A. Sayimanogari
131.P.K. Bharathi
132.Sri Pattabiraman
133.S.N. Sundari
134.K. Ariyakkan
135.M. Murugan
135.Aysha Nasi Munisha Begum
137.R. Anandhan
138.S. Chandrasekar
139.C. Surendran
140.K. Kasirajan
141.R. Arunachalam
142.S. Naveedha Krishnan

सत्यमेव जयते
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143.S. Chandra Mohan
144.R. Arunachalam
154.M. ramalingam
146.Y. Lalitha
147.P. Subramaniyan
148.R. Chitra
149.K. Lakshminarayana Somaiyaji
150.P. Kannabai
151.R. Subbaiya
152.C. Somasundaram
153.K. Rani
154.P. Thandapani
155.P. Rajendran
156.M. Sivalingam
156.A. Jayakumar
158.V. Jayaseetha
159.A. Gopalakrishna
160.R. Amirthalingam
161.S. Roselin Pushpam
162.S. Vaigundham
163.S. Ravindran
164.M. Mahalakshmi
165.V.K. Saraswathi
166.A. Jayalapatheen
167.R. Dhayanidhi
168.M. Srinivasan
169.R. Baskaran
170.A. Janaki
171.K. Easwari
172.N. Saraswathi
173.P. Rajalakshmi
174.K. Periya Nayagi
175.P. Vijayalakshmi
176.A. Azhagesan
177.A. Rajeswari
178.R. Murthy
179.V. Sankaralingam
180.V.S. Vatchala
181.R. Sankaran
182.A. Amuthavalli
183.R. Balasundaram
184.N. Umadevi
185.P. Mariyappan
186.S. Sriram
187.K. Rangaraj
188.T. Rukmani

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189.S. Nellaiyadi
190.M. Velu
191.S. Gomathi
192.Georgenodorama
193.S. Revathi
194.S. Marimuthu
195.K. Marimuthu ... Respondent sin W.P.25132/06

W.P.No.29636 of 2003: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the Tamil Nadu Administrative Tribunal relating to the Order dated 08.09.2003 passed in O.A. No. 3040 of 2003 and quash the same in so far as it pertains to the direction directing respondents 2 and 3 to give promotion to the 1st respondent retrospectively from the date on which his juniors were promoted and consequently direct the respondents 2 and 3 to treat the service of the first respondent as having been regularised from 28.04.2003 being the date of G.O. Ms. No.65 and place the first respondent in the seniority list of junior Assistant and Typists in the Social Welfare Department, Government of Tamil Nadu below the petitioner.

W.P.No.31895 of 2003: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the Tamil Nadu Administrative Tribunal relating to the Order dated 08.09.2003 passed in O.A. No. 3043 of 2003 and quash the same in so far as it pertains to the direction directing respondents 2 and 3 to give promotion to the 1st respondent retrospectively from the date on which his juniors were promoted and consequently direct the respondents 2 and 3 to treat the service of the first respondent as having been regularised from 28.04.2003 being the date of G.O. Ms. No.65 and place the first respondent in the seniority list of junior Assistant and Typists in the Social Welfare Department, Government of Tamil Nadu below the petitioner.

W.P.No.31896 of 2003: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the Tamil Nadu Administrative Tribunal relating to the Order dated 08.09.2003 passed in O.A. No. 3042 of 2003 and quash the same in so far as it pertains to the direction directing respondents 2 and 3 to give promotion to the 1st respondent retrospectively from the date on which his juniors were promoted and consequently direct the respondents 2 and 3 to treat the service of the first respondent as having been regularised from 28.04.2003 being the date of G.O. Ms. No.65 and place the first

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respondent in the seniority list of junior Assistant and Typists in the Social Welfare Department, Government of Tamil Nadu below the petitioners.

W.P.No.31897 of 2003: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the Tamil Nadu Administrative Tribunal relating to the Order dated 08.09.2003 passed in O.A. No. 3041 of 2003 and quash the same in so far as it pertains to the direction directing respondents 2 and 3 to give promotion to the 1st respondent retrospectively from the date on which his juniors were promoted and consequently direct the respondents 2 and 3 to treat the service of the first respondent as having been regularised from 28.04.2003 being the date of G.O. Ms. No.65 and place the first respondent in the seniority list of junior Assistant and Typists in the Social Welfare Department, Government of Tamil Nadu below the petitioners.

W.P.No.4944 of 2004: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records pertaining to the Order passed by the Tamil Nadu Administrative Tribunal in O.A. No. 3592 of 2003 dated 14.10.2003 and quash the same.

W.P.No.5028 of 2004: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records pertaining to the Order passed by the Tamil Nadu Administrative Tribunal, Chennai in O.A. No. 3041 of 2003 dated 08.09.2003 and quash the same.

W.P.No.5720 of 2004: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records pertaining to the Order passed by the Tamil Nadu Administrative Tribunal in O.A. No. 3591 of 2003 dated 04.11.2003 and quash the same.

W.P.No.5721 of 2004: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records pertaining to the Order passed by the Tamil Nadu Administrative Tribunal in O.A. No. 3379 of 2003 dated 14.10.2003 and quash the same.

W.P.No.5722 of 2004: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records pertaining to the Order passed by the Tamil Nadu

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Administrative Tribunal in O.A. No. 3380 of 2003 dated 14.10.2003 and quash the same.

W.P.No.8061 of 2004: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the Order passed by the third respondent Tribunal in O.A. No. 926 of 2004 dated 05.03.2004 and the records relating to the second respondent herein in Proc. No.21275/Admn.II (2)/2001 dated 03.02.2004 and the consequential Order (reversion Order) passed in R.C. No. 8754/ Admn. 4 (3) /2004 dated 25.02.2004 and quash the same in so far as revising the seniority of the petitioner by keeping the personnel absorbed from the Department of Land and Survey above the petitioner is concerned and the consequential reversion order to the lower post of Junior Assistant and direct the respondents 1 and 2 to protect the seniority of petitioners with all benefits.

W.P.No.8165 of 2004: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the Order passed by the third respondent Tribunal in O.A. No. 927 of 2004 dated 05.03.2004 and the records relating to the second respondent herein in Proc. No.21275/Admn.II (2)/2001 dated 03.02.2004 and the consequential Order (reversion Order) passed in R.C. No. 8754/ Admn. 4 (3) /2004 dated 25.02.2004 and quash the same in so far as revising the seniority of the petitioner by keeping the personnel absorbed from the Department of Land and Survey above the petitioner is concerned and the consequential reversion order to the lower post of Junior Assistant and direct the respondents 1 and 2 to protect the seniority of petitioners with all benefits.

W.P.No.9147 of 2004: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records pertaining to the Order passed by the Tamil Nadu Administrative Tribunal in O.A. No. 3042 of 2003 dated 08.09.2003 and quash the same.

W.P.No.20399 of 2004: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the second respondent herein relating to his proceedings in No.21275/Admn.II (2)/2001 dated 03.02.2004 and the proceedings in Na.Ka.No.8754/Admn 4 (3)/ 2004 dated 25.02.2004, quash the same in so far as it relates to the petitioner and direct the second respondent herein to restore the petitioner's seniority at Serial No.832 in the post of Junior Assistant as done in the proceedings of the second respondent herein in

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Proc.No.21275/Admn.II (2)/2001 dated 01.11.2001 and grant the petitioner all other consequential and attendant benefits.

W.P.No.25132 of 2006: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records pertaining to the Order passed by the first respondent in G.O.Ms. No.65, Social Welfare & Nutritious Meal Programme Department, dated 28.04.2003 and quash the same.

For Petitioners : Mr. C. Selvaraju, Sr. Counsel for Mr. T. Sella Pandian in WP Nos. 5720 to 5722/2004, 5028/2004, 9147/2004, 4944/2004 and 25132 of 2006

Mr. Ar.L. Sundaresan, Sr. Counsel for Ms. Al. Gandhimathi in WP No. 20399 of 2004

Mrs.Nalini Chidambaram, Sr. Counsel for Mr. R. Venkatavaradhan in WP Nos. 29636/2003 and 31895 to 31897 of 2003

Mr. Anand in WP No. 8061 and 8165 of 2004

For Respondents : Mr. S. Ravi for M/s. Sudha Ravi Associates for R1 in all the writ petitions

Mr. Vijayaraghavan. Addl. A.G. Mr. P. Subramani, Govt.Advocate for RR2 & 3 in all the Writ Petitions

COMMON ORDER

DHARMARAO ELIPE, J.

For the sake of convenience and easy reference, the writ petitioners are referred to as the petitioners, the persons, who filed the original applications before the Tribunal are referred to as the respondents and the Official Respondents are referred to as per their Designations.

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2. The respondents were originally appointed as Surveyor-cum-Draftsmen, Typist-cum-Junior Assistants on consolidated salary, in the early 1980s, in the Survey and Land Record Department, for execution of updating of land records in two phased manner and they were provided with training at the cost of the Government. The said Scheme, undertaken by the Government for updating the land records, ended by about 1987 or 1988. Pursuant to the representations made by the respondents and taking into consideration the fact that the respondents were provided with training at the cost of the Government, the Government, on sympathetic grounds, had expressed its decision with regard to granting permanent employment to all those appointees under consolidated pay in the Survey Department, by issuing G.O.Ms.No.1092, dated 27.10.1986. Consequently, G.O.278, dated 27.4.1992 was issued, ordering appointment of 272 persons as Junior Assistants-cum-Typists in Social Welfare Department. In this connection, the Director of Social Welfare issued proceedings dated 30.7.1992, 11.8.1992 and 29.3.1993, in reference No.135889/Adm 3 (3)/91, wherein it has been specifically stated that the persons working in the Survey and Land Records Department in consolidated pay are being appointed as Junior Assistant-cum-Typist in the Social Welfare Department under Rule 10(a)(i) in time scale of pay Rs.975-25-1150-30-1660 and their services will be regularised only after obtaining concurrence from the Tamil Nadu Public Service Commission.

3. In the meanwhile, the Tamil Nadu Public Service Commission called for applications from eligible candidates for the posts of Junior Assistants and Typists (Group-IV) in the Social Welfare Department in the year 1991 and the petitioners were appointed, after due selection process, between 1993 and 1995 as Junior Assistants and Typists and thereafter, their services were also duly regularised.

4. On 1.11.2001, the Commissioner of Social Welfare had passed orders publishing a combined seniority list of Junior Assistants, Steno-typists/Typists working in the Social Welfare Department, wherein the names of the respondents does not find place. Aggrieved, the respondents filed a batch of Original Applications before the Tamil Nadu Administrative Tribunal, praying for a direction to the Secretary to Government, Social Welfare Department and Commissioner, Social Welfare to regularise their employment as Junior Assistant/Typist in the Social Welfare Department. The Tribunal, by its common dated 16.7.2002 in O.A.Nos.1442 of 2002 etc. batch has directed the Secretary to Government, Social Welfare Department, Chennai to pass regularissation orders in respect of

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the applicants. Since, the Government has not passed any order within the time stipulated by the Administrative Tribunal, the respondents have filed Contempt Applications before the Tamil Nadu Administrative Tribunal and during the pendency of the said contempt proceedings, the Government issued G.O.Ms.No.65 Social Welfare Department, dated 28.4.2003, regularising the services of the respondents and others, totalling to 272, with effect from the date of their appointment in the Social Welfare Department, after obtaining concurrence of the Employment cum Administrative Reforms Department in Aa.Sa.Ku.No.52372/B/02-1, dated 25.9.2002. In view of the said G.O. issued by the Government, the Contempt Applications were closed. Thereafter, based on the G.O.Ms.No.65, dated 28.4.2003, the Head of the Department of the Social Welfare Department had issued the consequential orders of regularisation of the respondents on 9.6.2003.

5. In the meanwhile, on 30.4.2003, the petitioners and others, totalling to 115, were promoted as Assistants. Aggrieved, some of the respondents have again approached the Tamil Nadu Administrative Tribunal, by filing O.A.Nos.3041 to 3043 of 2003 for a direction to the Director of Social Welfare and Secretary to Government, Social Welfare Department to fix the seniority of the applicants/the respondents herein in the combined seniority list of Junior Assistants, Steno-Typists and Typists of Social Welfare Department with effect from 10.7.1992 with due seniority and in the appropriate place and consequently direct the said officials to promote the respondents herein as Assistants with effect from the date of promotion of their immediate juniors with all consequential monetary and service benefits.

6. The Tribunal, by its order dated 8.9.2003, has allowed all the Original Applications filed by the respondents. Pursuant to the order passed by the Tribunal in the original applications filed by the respondents, the Director of Social Welfare Department in his proceedings in Na.Ka.No.6440/Admn/2(1)/2004 dated 25.2.2004 temporarily promoted the respondents and others (96 in number) as Assistants. On the same day, by communication dated 25.2.2004 in proceedings in Na.Ka.No.8154/Admn/4(3)/2004, the persons who were already promoted as Assistants were reverted to Junior Assistants, Typist/Steno Typists. Aggrieved, the reverted candidates have filed these writ petitions.

7. Mr.C.Selvaraj, the learned Senior counsel appearing for the petitioners in WP No. 4944, 5028, 5720, 5721, 5722, 9147 of 2004 and WP No. 25132 of 2006, while reiteraing the facts of the cases, has submitted that the the respondents being the candidates

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originally appointed under Rule 10(a)(i)(1) of the Tamil Nadu State and Subordinate Service Rules, cannot claim seniority over and above the direct recruitees such as the petitioners and that the respondents have obtained ordered froms the Tribunal, behind the back of the affected parties, viz. the petitioners and hence all these writ petitions are entitled to be allowed. It is further submitted by the learned Senior counsel that in earlier occasion, in order to meet the contingency of this nature, before regularisation, the Government directed them to appear for special qualifying examination conducted by the Tamil Nadu Public Service Commission and thereafter only their services were regularised but in this case, the Secretary of Social Welfare Department, without conducting any special qualifying examination, forwarded the papers to the Tamil Nadu Public Service Commission for its concurrence under Regulation 16 of Service Commission Regulation and the Commission also erroneously gave its concurrence. The Government, while considering the regularisation, granted age exemption also. Even in G.O.Ms.No.65 dated 28.04.2003, though regularisation was granted, but nothing whispered about fixation of seniority. Immediately after regularisation, some of the respondents herein have filed Original Applications before the Tribunal seeking declaration of probation and promotion with retrospective effect from the date on which their juniors were promoted. The Tribunal, even without notice to the Government straight away directed the Government to give seniority and promotion to some of the respondents from the date on which their juniors were promoted, without taking note of the fact that the necessary parties like the petitioners are not impleaded. The question of junior and senior would arise only in the event when all the persons were either appointed or promoted or selected alike. The respondents were regularised by G.O. Ms. No.65 dated 28.04.2003. Probation period of two years will commence only after regularisation, that too within a period of two years as per Rule 27 of General Rules.

8. Mr.AR.L.Sundaresan and Mrs.Nalilni Chidambaram, learned senior counsel, appearing on behalf of some of the writ petitioners, and other counsel appearing for some of the writ petitioners also argued on the same lines as that of Mr.C.Selvaraj, praying to allow the writ petitions, setting aside the orders of the Tribunal.

9. Mr.P.Subramani, the learned Government Advocate for the respondents has submitted that the Government in GO.(D) 278 Social Welfare and Nutritious Meal Programme dated 27.4.1992 have issued orders appointing 272 persons, who were formerly employed on consolidated pay in the Department of Survey and Land Records, as

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junior assistants/typists in the department of Social Welfare and other departments, after taking a policy decision to offer appointment to them. The persons accommodated in the other departments were regularised from the date of appointment, whereas the persons appointed in the Social Welfare Department were not regularised; that pursuant to the Order passed by the Tribunal, the Secretary to the Government, Social Welfare Department has issued GO.(D).65 Social Welfare and Nutritious Meal Programme Department dated 28.4.2003 regularising the service after obtaining concurrence from the Tamil Nadu Public Service Commission with retrospective effect from the date of original appointment in the Social Welfare Department; that the writ petition in WP.No.25132/2006 was filed after lapse of three years, challenging the said Government Order. Though G.O.Ms.No.278 was issued on 27.04.1992 appointing the respondents in the social Welfare Department, due to administrative procedure involved in the regularisation of service, GO.No.65 was issued belatedly on 28.4.2003. In and by the said Government Orders, the Government, in exercise of their inherent power, regularised the services of the respondents from the date of their appointment; that GO.Ms.No.278 dated 27.4.1992 as well as the GO.No.65 dated 28.4.2003 were issued after obtaining concurrence from the Tamil Nadu Public Service Commission and age was also relaxed and that this court dismissed the WPMP.No.36158 of 2003 in WP.No.29636 of 2003 on 10.11.2003, holding that the petitioners therein cannot claim seniority over the personnel, who have been appointed much earlier than that of his appointment and hence, the said order is binding on the writ petitioners, who are similarly placed and prayed for dismissal of these writ petitions.

10. Mr.S.Ravi, learned counsel for the respondents has submitted that the respondents were initially appointed on consolidated pay as typist through employment exchange in Survey and Land Records Department; that the respondents worked for over 9 years in that Department; that the respondents were appointed in the Social Welfare Department in the year 1992, but their services were not regularised nearly for 10 years though they were fully qualified for the said post; that OA.No.1442/2002 batch were filed before the Tribunal by the respondents, seeking regularisation, which were allowed by the Tribunal, directing the Government to regularise the service within a period of three months, which was not challenged by the petitioners immediately, but chosen to challenge after lapse of four years; that since the respondents joined in 1992 they are entitled to further promotion over and above the writ petitioners since their services have been regularised from the date of initial appointment in the Social

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Welfare Department; that the appointment of the respondents were made pursuant to the policy decision taken by the Government, which cannot be challenged by the petitioners; that the petitioners were fully aware that the respondents have filed OA before the tribunal, but they were keeping mum all along; that some of the petitioners challenged the said GO.Ms.No.65 dated 28.04.2003 without challenging the order of the Tribunal; that GO.65 dated 28.4.2003 was issued after obtaining consent under Rule 16B of the Tamil Nadu Public Service Commission for regularizing the services with retrospective effect; that the Government within its powers under the Special Rules of Tamil Nadu Ministerial Service Rules and the Rule of Reservation for appointment, had relaxed the age limit and the impugned orders were passed in accordance with the above said special Rules; that the Government exercised its power conferred under it, in not only appointing 272 persons in the Social Welfare Department, but also appointing about 10,000 persons, in various departments and prayed for dismissal of these writ petitions.

11. In the above backdrop, the following points would arise for consideration in these writ petitions:

(i) Whether the writ petitions filed by the petitioners are maintainable or whether they are barred by the principles of res judicata, as contended by the learned counsel for the respondents?

(ii) Whether the respondents can claim seniority over and above the petitioners, by virtue of their regularisation from the date of their appointment?

(iii) Whether the Tribunal is right in allowing the Original Applications filed by the respondents which led to the reversion of the petitioners?

Point No.1:

12. The learned counsel for the respondents strenuously argued that the petitioners are restrained from filing the writ petitions, since even though they were fully aware of the earlier Original Applications filed by the respondents seeking regularisation, all these writ petitioners kept mum and the present order in the Original Application is nothing but a consequential one to the earlier order passed by the Tribunal, thus directing the promotion of the respondents. He further contended that if the writ petitioners are aggrieved against the orders of the Tribunal, they should have challenged the earlier orders passed by the Tribunal in O.A.No.1442 of 2002 batch, dated 16.7.2003, ordering the regularisation of the respondents and since the said order of the Tribunal reached its finality, being unchallenged, the claim of the petitioners is barred by the principles of res judicata . In support of his arguments, he relied on a decision of the Apex Court

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in THE DIRECT RECUIRT CLASS-II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS vs. STATE OF MAHARASHTRA AND OTHERS (AIR 1990 Supreme Court 1607) wherein it is observed:

> "35.Writ Petition No.1327/1982 was argued by J.H.Bhatia, the petitioner, in person. He was directly recruited as Deputy Engineer Class II in July 1959, and has challenged the constitutional validity of the 1978 Rules. Mr.Singhvi, the learned counsel for the respondents, took a preliminary objection to the maintainability of the writ application on the ground that his claim stands barred by principles of res judicata. Admittedly, he was represented in WP.No.672/1981 filed before the Bombay High Court which was dismissed on 7.9.1981, upholding 1978 Rules. An application under Art.136 of the Constitution being numbered as SLP.No.8064 of 1981 was filed from this judgment in representative capacity and was dismissed by this court on 29.12.1981. These facts were not denied by the petitioner before us, and it was therefore contended on behalf of the respondents that so far the validity of the 1978 Rules is concerned, it must be held to be binding on the petitioner in respect of identical relief now pressed by him in the present writ case. The objection appears to be well founded. It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. "

13. Admittedly, either in the earlier proceedings before the Tribunal or in the present impugned proceedings before the Tribunal, the petitioners were not parties. As admitted by the respondents, the earlier Original Applications in O.A.No,1442 of 2002 batch were filed by them praying for regularisation of their services, but not for any other purpose like fixation of their seniority over and above the petitioners. Therefore, the petitioners have no opportunity to know the earlier proceedings, even though an order has been passed favouring the respondents. But, only after the present impugned proceedings before the Tribunal in O.A.Nos.3041 to 3043 of 2003 dated 8.9.2003, since they have lost their promotions, as submitted on behalf of the petitioners, the petitioners came to know of the proceedings before the Tribunal.

14. After the petitioners were promoted on 30.4.2003, the respondents have filed O.A.Nos.3041 of 2003 etc. on 4.9.2003 before

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the Tribunal, seeking fixation of their seniority and consequential promotion. In all fairness, the respondents should have impleaded the already promoted candidates, since they would be the aggrieved parties, if the orders are passed promoting the respondents. The respondents have conveniently omitted to implead any of the promotees as parties to the proceedings before the Tribunal, to suit their convenience and the Tribunal also, without understanding the impact of the order on the already promoted candidates, has ordered fixation of seniority and promotion of the respondents, by its order dated 8.9.2003, causing much hardship and prejudice to the already promoted candidates like the petitioners.

15. Under the similar circumstances, the Honourable Apex Court in RAMA RAO AND OTHERS vs. ALL INDIA BACKWARD CLASS BANK EMPLOYEES WELFARE ASSOCIATION AND OTHERS [(2004) 2 SCC 76] has held:

> "It is true that the order of promotion was in question in WRit Petition No.1551 of 1990 at the instance of one Ashok but even in the said writ petition the promotees were not impleaded as parties. As in the case of the Association, even in the writ petition filed by Ashok, the order of dereservation passed by the Union of India or NABARD or the sponsor Bank had not been questioned. Admittedly, the Union of India or NABARD were not parties in the said writ petitions. An Order issued against a person without impleading him as a party and, thus, without giving him an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view the fact that by reason of the impugned direction, the orders of promotion effected in their favour had been directed to be withdrawn, indisputably, were necessary parties. In their absence, therefore, the writ petition could not have been effectively adjudicated upon. In absence of the "Promotees" as parties, therefore, it was not permissible for the High Court to issue the directions by reason of the impugned judgment."

16. In the case relied on by the learned counsel for the respondent, the petitioner therein was represented in the earlier proceedings in WP.No.672/1981 filed before the Bombay High Court, which was dismissed on 7.9.1981, upholding 1978 Rules and therefore, when a similar relief was claimed in the subsequent proceedings, the Supreme Court has observed that the principles of res judicata would operate against him. Whereas in the case on hand, as already adverted to supra, the respondents have obtained orders behind the back of the petitioners and the petitioners never had the occasion to know about the earlier proceedings before the

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Tribunal and only when they were reverted, pursuant to the impugned orders of the Tribunal, they rushed to this Court by way of these writ petitions. Therefore, it cannot be said that the principles of res judicata would operate against the petitioners. This point is thus answered in favour of the petitioners and against the respondents.

POINTS No.2 AND 3:

17. Admittedly, the respondents were originally appointed on 10(a)(i)(1) of the Tamil Nadu State and Subordinate Service Rules basis, which provides for making of temporary appointments, when it is necessary in the public interse to do so, owing to an emergency which has arisen for filling up a vacancy immediately. In this case, the respondents were appointed temporarily dehors the rules merely on sympathetic grounds by the Governments. But, the petitioners were appointed through due course of selection by the Tamil Nadu Public Service Commission.

18. In A.P.M.MAYANKUTTY vs. SECRETARY PUBLIC SERVICE DEPARTMENT [(1977) 2 SCC 360], the Apex Court Court observed that 'the services rendered by the applicants under Rule 10 (a) (i) (1) cannot be considered for the purpose of seniority as such appointment is a matter of stop-gap, emergency or fortuitous arrangement'. Now, it is a well established principle of law that the candidates appointed under 10(a)(i)(1) are not entitled to count their temporary service for seniority.

19. In STATE OF TAMIL NADU AND ANOTHER vs. EPARIPOORNAM AND OTHERS (1992 Supp (1) SCC 420) , the Apex Court has held:

> " .... It is not open to the parties to claim that their temporary service as Junior Professors upon regularisation should be counted for the purpose of determining the seniority in the cadre. There is no rule supporting such contention. The services rendered in the temporary post is available either for earning increments or for commencement of probation".

20. In V. SREENIVASA REDDY AND OTHERS vs. GOVERNMENT OF A.P. AND OTHERS (1995 Supp (1) Supreme Court Cases 572), the Apex Court has held:

> "It is now well settled law that appointment/ promotion must be in accordance with the Rules, direct recruitee takes his seniority from the date on which he starts discharging the duty of the post borne on the cadre while a temporary appointee appointed dehorse the rules or on ad hoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment."

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21. In S.K.SAHA vs. PREM PRAKASH AGARWAL AND OTHERS (AIR 1994 S.C. 745) the Apex Court has held:

> "8. There cannot be any dispute that the appointment of the appellant, according to rules, was made on basis of the recommendation of the Commission, on 12.05.1960. In this background, there was no occasion to take into consideration the period when the appellant was continuing on ad hoc basis, especially during the period when the post itself was a non-gazetted post.... Any officiation on the post when it was a non-gazetted post cannot be held to be a continuous officiation on the post so as to entitled the appellant to count that period towards his continuous officiation. .... This Court has repeatedly struck down and decried any attempt on the part of the appointing authority to give a notional seniority from a retrospective date, especially, when this process affects the seniority of those who have already entered into the service.

22. From the above judgments, it is clear that the seniority of a direct recruitee has to be counted from the date on which he starts discharging the duty of the post borne on the cadre, whereas the seniority of a temporary appointee, appointed dehorse the rules or on ad hoc basis or to a fortuitous vacancy, should be counted from the date of regular appointment. In the case on hand, the date of regularasitation of the services of the respondents is 28.4.2003 by virtue of G.O.Ms.No.65. Even though the said G.O. Regularises their services retrospectively, in terms of the judgments of the Apex Court in State of Tamil Nadu and another vs. E. Paripoornam and others (1992 Supp (1) SCC 420), and S.K. Saha v. Prem Prakash Agarwal and others (AIR 1994 Supreme Court 745), the service rendered in the temporary post is available either for earning increments or for commencement of probation only and not to count their seniority from a retrospective date, especially, when this process affects the seniority of those who have already entered into the service as held by the Apex Court in Therefore, the respondents, being appointees dehors the rules, cannot claim seniority over and above the petitioners, who are directly recruited to the posts, after due process of selection through Tamil Nadu Public Service Commission.

23. At this juncture, the learned senior counsel appearing for the petitioners would question the very regularisation of the respondents and cite a judgment of the Apex Court in Santosh Kumar Verma and others v. State of Bihar and others (1997) 2 SCC 713 wherein it was held:-

> "Section 6 (3) of the Act only empowers the authority to

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appoint the Secretary and other Officers and employees of the Authority. The power under the proviso is only a breathing elbow power given to the Authority to make temporary appointments so that the work of the Development Authority goes on pending recruitment. Therefore, when the advertisement was made for the recruitment, it was obviously in furtherance of the power flown under the proviso for a limited period. Thereby, the appointments obviously are only temporary appointments. The appellants realising the limited temporary tenure of the appointments had sought assistance of the Government for regularisation which was negatived by the Public Service Commission. It is seen that these posts are within the purview of the Public Service Commission. Therefore, the Government sought the concurrence of the Public Service Commission and the Public Service Commission had not concurred and, in our view, correctly with the request made by the Government. Therefore, any regularisation in violation of the recruitment to be made by the Public Service Commission is in contravention of the law. The High Court, therefore, rightly did not issue any Mandamus for regularisation of the services made in contravention of the Rules and no mandamus or direction would be issued to violate law."

24. In the said case, the Public Service Commission declined to render concurrence for regularisation of the posts, which are within the purview of the Service Commission. But, in the case on hand, the Government has passed G.O.(D) 65 Social Welfare and Nutritious Meal Programme Department dated 28.4.2003, regularising the services of the respondents, after obtaining concurrence from the Tamil Nadu Public Service Commission. Therefore, the above said judgment has no application to the facts of the case. Further, so far as the regularisation of the services of the respondents, by virtue of the directions of the Tribunal is concerned, it remained unchallenged, as already stated supra and the petitioners are challenging the orders of the Tribunal, directing fixation of seniority of the respondents over and above the petitioners and their consequential reversion from the promoted posts. It is made clear that though the services of the respondents were regularised with retrospective effect, the same shall be treated as only for the purpose of increments or for commencement of probation and not to count their seniority from a retrospective date. Their seniority shall be fixed only from the date when their services were regularised i.e. from 28.4.2003.

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25. In K. KALAIMUTHU vs. STATE OF TAMIL NADU AND OTHERS [(2006) 3 MLJ 161 = (2006) 6 SCC 558] the Apex Court has held:

> ".... The law is well established that initial appointment to a post without recourse to the rules of recruitment, is not an appointment to a service as contemplated under Rule 2 (1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact, Rule 39 (c) of the General Rules indicate that a person temporarily promoted in terms of Rule 39 (a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the rules. It stands to reason that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time his appointment is regularised. Therefore, it is only from the date on which his services are regularised that such appointee can claim seniority over those appointees subsequently.

26. In STATE OF ORISSA AND ANOTHER vs. DR.PRARI MOHAN MISRA (JT 1995 (2) SC 54), the Apex Court has held:

> " In other words, mere prolonged of continuous ad-hoc service does not ripen into a regular service to claim permanent or substantive status. He would remain to be on ad-hoc basis until further orders. "

27. In SYED KHALID RIZVI AND OTHERS vs. UNION OF INDIA AND OTHERS (1993 Supp (3) Supreme Court Cases 575), the Apex Court has held:

> "Thus it is settled law that a promotee officer appointed temporarily under Regulation 8 of Promotion Regulations and Rule 9 of Cadre Rules to a cadre post does not get his/her continuous officiation towards seniority. Seniority would be counted only from the date on which he/she was brought into the select-list by the selection committee in accordance with Recruitment Rules. Promotion Regulations and Seniority Rules was approved by the UPSC, appointed under Rule 9 of Recruitment Rules and Regulation 9 of Promotion Regulations and has continuously officiated without break. Seniority would be entitled from the date of select-list or continuous officiation whichever is later. He/she is entitled to appointment by the Central Government to substantive

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vacancy under Regulation 9 of Promotion Regulations from that date. The Central Government and the UPSC should approve temporary appointment by an order in writing and also of such officiation. In that event seniority would be counted only from the date, either of his/her inclusion in the select-list or from the date of officiating appointment to the cadre post whichever is later. By operation of Explanation 1 to Rule 3 (3) (b) of the Seniority Rules his seniority will be counted only from either of the later dates and the necessary effect is that the entire previous period of officiation should be rendered fortuitous and the appointment as ad hoc appointment or by local arrangement."

28. The learned counsel for the respondents relied on a decision of the Apex Court in STATE OF WB AND OTHERS vs. AGHORE NATH DEY AND OTHERS [(1993)3 SCC 371). This judgment deals with persons whose appoints were without any time limit and otherwise except for the deficiency of certain procedural requirements. But, in the case on hand, the respondents were appointed for a limited purpose in 1980s in the Survey and Land Record Department for execution of updating of land records. Even though the said Scheme was completed in 1987 or 1988, the Government, considering the long period of service they have rendered and that they received training at the cost of the Government and also considering their plight, has ordered their absorption and even at the time of their initial appointment it was made clear to them that it is only a 10 (a)(i)(1) service. Therefore, the respondents cannot claim benefits of the above said judgment. Moreover, in the same judgment it has been held that the period of ad hoc service put in by the employees cannot be counted for reckoning their seniority. Therefore, this judgment is of no help to the case of the respondents.

29. The learned counsel for the respondents also relied on another judgment of the Apex Court in A.BALAKRISHNAN AND ANOTHER vs. GOVERNMENT OF TAMIL NADU AND OTHERS [1995-Supp-4-SCC-108], wherein it was held:

"It is thus obvious that in Paripoornam case the order of regularisation itself denied the benefit towards the seniority of the period of service rendered prior to the date of regularisation. There is no such condition in the order of regularisation of the appellants in the present case. Mr.Chidambaram, however, contends that since the seniority was initially fixed by the department ignoring the temporary period, the condition should be

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implied read in the appointment order. We do not agree with Mr.Chidambaram. In the absence of any specific order denying seniority to the appellant from the date of their initial appointment from which they were regularised - they are entitled to count the whole of the period of service for the purpose of seniority."

30. The view expressed in this judgment is superseded by the latest judgment of the Supreme Court in K.KALAIMUTHU vs. STATE OF TAMIL NADU AND OTHERS (2006) 3 MLJ 161 = (2006) 6 SCC 558 wherein it has been specifically held that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recuirtment rules, cannot be said to be in service till such time his appointment is regularised. Therefore, it is only from the date on which his services are regularised that such appointee can claim seniority over those appointees subsequently." Therefore, the judgment cited by the learned counsel for the respondents is not helpful to the case of the respondents.

31. Lastly, the learned counsel for the respondents submitted that the respondents cannot be blamed for the delay in regularisation of their services. In this connection, it is to be stated that the respondents have kept quite all these years without taking any step to get their services regularised by the Government. It is only when the officials have prepared the combined seniority list in on 1.11.2001, they woke up from their deep slumber and filed Original Applications No.1442 of 2002 batch before the Tribunal, praying for a direction to the Government to regularise their services. The respondents ought to have resorted to such course of action even much earlier. Therefore, we feel even there is some slackness on the part of the respondents in taking appropriate steps to get their services regularised. By their lethargic attitude, the respondents allowed the things to go against them and now want to deprive the legal rights flowed to the petitioners, by filing Original Applications before the Tribunal, without impleading the petitioners as parties therein, which attitude of the respondents cannot be appreciated.

32. The learned counsel for the respondents and also the learned Government Advocate submitted that it is the policy decision of the Government to regularise the services of the respondents from the date of their appointment, which the petitioners cannot challenge. It is now a well established principle of law that there are no excluded categories of State policy or practice, which can claim exemption from the judicial consideration, vide O.KONALOV vs. COMMANDER, COAST GUARD REGION

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[(2006) 4 SCC 620]. However, as already adverted to supra, we are not deciding in these writ petitions the legality or otherwise of the regularisation of the services of the respondents ordered by the Government pursuant to the directions of the Tribunal, but only concerned with the date from which the seniority of the respondents to be counted. For all the above reasons, these writ petitions deserve to be allowed. Points 2 and 3 are thus answered in favour of the petitioners and against the respondents.

In the result,

(i) all the above writ petitions are allowed.

(ii) The orders passed by the Tamil Nadu Administrative Tribunal, ordering fixation of the seniority of the respondents counting the date from the date of their appointment and the consequential orders of promotions issued by the officials, promoting the respondents and such other similarly placed persons and reverting the petitioners and such other similarly placed persons, are all set aside. It is directed that the seniority of the respondents should be counted as against the direct recruitees such as the petitioners and other such similarly placed candidates only from the date, when their services were regularised i.e. from the date of G.O.No.65, dated 28.4.2003.

(iii) Consequently, the officials respondents are directed to re-fix the seniority of the petitioners and the respondents and such other similarly placed persons, taking note of the observations made in this order regarding the rights of the direct recruitees and that of the candidates who were originally appointed on 10(a)(i)(1) of the Tamil Nadu State and Subordinate Service Rules or on adhoc basis, such as the respondents.

No costs. Consequently, all the connected W.P.M.Ps. are closed.

सत्यमेव जयते

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Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Secretary to the Government of Tamil Nadu
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2. The Director of Social Welfare Department
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3. The Registrar
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   High Court Building
   Chennai - 600 104

4. The District Social Welfare Officer,
Thanjavur.

1 ccs to the Government Pleader, sr. 21666, 21770, 21668, 21667
2 ccs to Mr. Anand & Sagar, Advocate, sr. 21361
5 ccs to M/s. Sudha Ravi, Associates, Sr. 21187
3 ccs to Mr.S. Mani, Advocate, sr. 21422, 21421
1 cc to Mr.A Gladys Daniel, Advocate, Sr. 21556

W.P. Nos. 29636, 31895, 31896, 31897 of 2003, 4944, 5028, 5720, 5721, 5722, 8061, 8165, 9147, 20399 of 2004 and 25132 of 2006

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